



Legislative Bulletin.....May 2, 2001

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H.R. 10—Comprehensive Retirement Security and Pension Reform Act of 2001

H.R. 10— Comprehensive Retirement Security and Pension Reform Act of 2001 (Portman)

Order of Business: This bill is scheduled to be considered on Wednesday, May 2nd under a modified closed rule. A Republican amendment in the form of a substitute (combining changes approved by the Ways & Means and the Education and the Workforce committees) will be offered. Also offered will be a Democratic amendment in the nature of a substitute that would, among other things, 1) provide a refundable tax credit for lower-income workers of up to \$1000 annually on contributions to IRAs or pension plans, and 2) allow a three-year tax credit for small employers who start a retirement plan.

Summary: H.R. 10 would amend the Internal Revenue Code and the Employee Retirement Income Security Act of 1974 (ERISA) to increase IRA contribution limits, improve the portability of pension plans, and otherwise increase flexibility in retirement savings plans. The provisions of the bill fall into the following categories: 1) Raising IRA contribution limits, 2) Expanding pension coverage, 3) Increasing asset portability, 4) Strengthening legal protections for plan participants, and 5) Reducing regulatory burdens on plan sponsors. Most of the provisions, unless otherwise indicated, would become effective no *earlier* than January 1, 2002. The highlights of the bill are as follows.

Raising IRA contribution limits

- The annual limit on contributions to Individual Retirement Accounts (IRAs) would be increased according to the following schedule and then indexed for inflation in \$500 increments after 2004.

<u>Year</u>	<u>IRA Contribution Limit</u>
Current law	\$2000
2002	\$3000
2003	\$4000
2004	\$5000

- For people aged 50 and older, the contribution limit would jump to \$5000 in 2002, with indexing in \$500 increments to begin after 2004.

Expanding pension coverage

- The annual benefit limit for defined benefit (DB) plans would increase from \$90,000 to \$160,000 this year and thereafter be indexed for inflation in \$5000 increments.
- The early retirement age would be lowered to 62, and the regular retirement age would be lowered to 65 for the purposes of applying the benefit limits.
- The annual contribution limit for defined contribution (DC) plans would increase from \$30,000 to \$40,000 this year and thereafter be indexed for inflation in \$1000 increments.
- The limit on annual additions (i.e. the sum of employee and employer contributions) under a DC plan would increase from 25% to 100% of compensation.
- Participants aged 50 and above would be able to make up to \$5000 in additional contributions to 401(k) or similar plans, indexed for inflation after 2006. Such “catch-up” contributions would not count towards any other contribution limit.
- The limit on compensation that may be taken into account under a plan would be raised from \$150,000 to \$200,000 and indexed for inflation in \$5000 increments.
- Annual elective deferrals (under 401(k) plans, 403(b) annuities, and simplified employee pensions) would increase in accordance with the following schedule and be indexed in \$500 increments after 2006:

<u>Year</u>	<u>Elective Deferral Limit</u>
Current law	\$10,500
2002	\$11,000
2003	\$12,000
2004	\$13,000
2005	\$14,000
2006	\$15,000

- The limit on deferrals under a Section 457 plan for state and local government employees, currently \$8500, would be raised in accordance with the above schedule for elective deferrals. The limits under a Section 457 plan would double in the three years before retirement.
- The limit on deferrals to a savings incentive match plan for employees of small employers (SIMPLE) would increase in accordance with the following schedule and be indexed in \$500 increments after 2005:

<u>Year</u>	<u>Elective Deferral Limit</u>
Current law	\$6000
2002	\$7000
2003	\$8000
2004	\$9000
2005	\$10,000

- Matching contributions would be taken into account in satisfying minimum contribution requirements for DC plans.
- Certain user fees levied by the IRS for determinations of a plan's qualifications would be eliminated.
- The limit on deductible contributions under a profit-sharing or stock-bonus plan would increase from 15% to 20% of the compensation of the employees covered by such a plan.
- Participants in 401(k) plans or 403(b) annuities could elect to have some or all of their elective deferrals treated as after-tax contributions (but not included in the participants' respective gross incomes).
- Employees would have to be fully vested in employer matching contributions to a retirement plan within a maximum of six years (as opposed to seven years under current law).
- Failure to satisfy minimum distribution rules would trigger a 10% excise tax (on the amount supposed to be distributed but not distributed), down from 50% in current law.

Increasing asset portability

- The bill would allow eligible distributions from qualified retirement plans, 403(b) annuities, IRAs, and Section 457 plans to be directly rolled over into any other such plan.
- Surviving spouses could roll over distributions to a qualified plan in which the spouse participates. The Secretary of the Treasury could waive the 60-day rollover requirement in cases of tragedy (such as death).
- A participant's accrued benefit would not decrease if benefits are transferred to a DC plan that does not provide all of the forms of distribution that previously were available.
- Distributions from a 401(k) plan, 403(b) annuity, or a Section 457 plan could occur when employment with a plan's sponsor ends (so that an employee whose employer merges with or is acquired by another firm can take distributions even while continuing work at the same job).
- Plan sponsors would be allowed to disregard benefits attributable to rollover contributions when determining whether a lump-sum payment to a retiring employee needs the employee's written consent (currently the benefit threshold for consent is \$5000)

Strengthening legal protections for plan participants

- The current full-funding limit on liability would be raised from 150% (of a plan's accrued liability) to 165% in 2002, 170% in 2003, and repealed in 2004.
- Sponsors of DB plans would have to notify plan participants in advance and comprehensibly in writing of any change in the plan that would "significantly" (*not defined in bill*) reduce the rate of benefit accrual (including reducing or eliminating an early retirement benefit). An excise tax of \$100 per day of noncompliance (beginning after a 30-day window or some other reasonable time period during which a sponsor made bona fide efforts to comply) would be levied on sponsors providing no or improper notice of benefit accrual changes. Exempted from notification requirements

could be (at the discretion of the Secretary of the Treasury) plans with fewer than 100 participants and plans that allow participants to choose between the old and new rates of benefit accrual.

- Sponsors of single-employer plans would have to provide benefit statements at least annually (more frequently if requested in writing) to DC-plan participants and at least once every three years (more frequently if requested in writing) to DB-plan participants.
- Beginning in 2005, an excise tax of 50% of the value of involved transactions would be levied on an employee stock ownership plan (ESOP) that conducts prohibited transactions with substantial shareholders of the plan's sponsoring corporation.

Reducing regulatory burdens on plan sponsors

- A DB plan with assets of at least 125% of current liability would be permitted to use a valuation date within the prior plan-year.
- ESOP dividends could be reinvested in employer securities, pending the approval of plan participants, without sacrificing the dividend deduction.
- The definition of a "highly compensated employee" in the Tax Reform Act of 1986 would be repealed.
- Retirement planning services provided by employers would not be counted as income or wages.
- Owners of a business that maintains a retirement plan covering only themselves would not have to file an annual return, as long as the value of the plan's assets has never exceeded \$250,000.
- The Secretary of the Treasury and of Labor would have to develop and implement a simplified annual return that plans with under 25 participants would file.
- The Secretary of the Treasury would be directed to "update and improve" the Employee Plans Compliance Resolution System (EPCRS), putting particular emphasis on increasing awareness of EPCRS, extending the timeframe for self-corrections of compliance failures, expanding what is considered to be an "insignificant" compliance failure, and assuring that any tax, penalty, or sanction associated with compliance failure is proportional to the nature of the failure.
- The Secretary of the Treasury would be directed to issue regulations allowing the use of more subjective means rather than the current mathematical formulas to determine whether a plan is discriminating in favor of highly-paid employees.
- Effective immediately, employers would be permitted to submit their annual reports electronically.
- Premiums paid to the Pension Benefit Guaranty Corporation (PBGC) by new and small plans would be reduced.

If this legislation requires any amendments to a plan or annuity contract, they would not have to be implemented before the last day of the first plan year beginning on or after January 1, 2004 (January 1, 2006, in the case of a governmental plan).

Additional Background: A similar bill, H.R. 1102, passed in the 106th Congress by a vote of 401-25 (Roll call #412) but was never considered by the Senate. Similar legislation had been considered by the House on four prior occasions.

Cost to Taxpayers: The Joint Committee on Taxation estimates that this legislation would result in a \$1.1 billion *savings* for taxpayers in FY2002, a \$16.4 billion total savings between FY2002 and FY2006, and a \$51.7 billion total savings between FY2002 and FY2011.

Does the Bill Create New Federal Programs or Rules?: The legislation primarily would modify the details (in favor of employees and employers) of pre-existing pension laws. Regulatory burdens are also reduced in many respects (see above). However, a few new studies and inquiries into the functionality of the new limits and benefits would be authorized. Additionally, the bill would mandate some new paperwork for employers (such as the informing of employees of benefit changes in DB plans). And a few new excise taxes are created for noncompliant or illegal activity.

Constitutional Authority: The committee report (#107-51) for H.R. 10 is not available at this time. However, Committee Report 106-331 for H.R. 1102 in the 106th Congress cited Article I, Section 8, Clause 3 (the power for Congress to regulate interstate commerce), as the source of constitutional authority. The Report noted that in *Commercial Mortgage Insurance, Inc. v. Citizens National Bank of Dallas*, the court held that Congress legitimately concluded that employee benefit plans so affected interstate commerce as to be within the scope of congressional powers under Article 1, Section 8, Clause 3 of the Constitution.

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